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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 IN RE: CATHODE RAY TUBE (CRT)
14 ANTITRUST LITIGATION

No. 3:07-CV-05944-JST

MDL No.: 1917

15 This Document Relates to:

16 ALL DIRECT PURCHASER ACTIONS

**REPLY OF THE UNITED STATES IN
SUPPORT OF ITS MOTION FOR
LEAVE TO PARTICIPATE AT THE
MAY 30 HEARING**

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REPLY OF THE UNITED STATES IN SUPPORT OF ITS MOTION FOR LEAVE TO PARTICIPATE AT THE
MAY 30 HEARING

Case No. 3:07-cv-05944-JST

1 On May 9, 2019, the United States moved for leave to participate in the hearing
2 scheduled on May 30, 2019, to address the proper legal interpretation of the Foreign Sovereign
3 Immunities Act, 28 U.S.C. § 1602 *et seq.* (FSIA), with respect to two issues raised by the Irico
4 Defendants’ amended motions to dismiss. *See* Doc. 5473. On May 10, 2019, the Irico
5 Defendants filed an opposition, arguing that the United States should not be allowed to
6 participate in the May 30 hearing because the United States “discharged any interest it had in this
7 case” when it declined to prosecute the Irico Defendants, Doc. 5477, at 1-2, and because the
8 plaintiffs can adequately represent the United States at the hearing, *id.* at 2-3. Both arguments
9 are meritless.

10 First, the United States does not seek to participate in the May 30 hearing to argue that
11 this antitrust case must proceed against the Irico Defendants. In its Statement of Interest filed on
12 April 23, 2019, the United States expressly took no position on the application of the FSIA to the
13 particular facts of this case, and the United States does not plan to take a position on that factual
14 question at the hearing. Rather, the United States seeks to participate at the hearing because the
15 Irico Defendants’ amended motions to dismiss are premised on an incorrect understanding of the
16 proper legal framework under the FSIA that, if adopted by this Court, could have adverse
17 implications beyond the instant case. The United States has a significant interest in participating
18 in the hearing to avoid that outcome.

19 Second, the plaintiffs do not adequately represent the United States at the hearing. Like
20 the United States, the plaintiffs have identified legal errors in the Irico Defendants’ arguments,
21 and rely on many of the same cases. As private parties, however, the plaintiffs do not and cannot
22 adequately represent the government on legal questions concerning foreign sovereign
23 immunity—an issue on which the United States has significant and unique interests.

24 Thus, the United States respectfully requests leave to appear at the May 30 hearing. The
25 Irico Defendants request that, “in addition to their allotted time to respond to arguments from
26 [plaintiffs], they be allowed equal time to respond to the DOJ’s arguments.” Doc. 5477, at 3 n.1.
27 The United States has no objection to this request, and leaves it to the discretion of the Court to
28 decide the form and extent of its participation at the hearing.

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Respectfully submitted,

Dated: May 14, 2019

/s/ Nikolai G. Levin
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